

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Applications of )
THE BOARD OF TRUSTEES OF NORTHERN ) File Nos. 0007030772-0007030777
MICHIGAN UNIVERSITY )
For New Educational Broadband Service Stations )

MEMORANDUM OPINION AND ORDER

Adopted: April 4, 2016

Released: April 5, 2016

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On November 13, 2015, the Board of Trustees of Northern Michigan University (NMU or Northern Michigan University) filed applications and a waiver request in support of those applications for new Educational Broadband Service (EBS) channels on and near the reservation of the Bad River Band of the Lake Superior Tribe of Chippewa Indians in Northeastern Wisconsin and for various areas covering the Upper Peninsula in Michigan. In this Memorandum Opinion and Order, subject to certain conditions, we grant to NMU a waiver of the filing freeze on new EBS applications and a waiver of Section 1.913(b) of the Commission's rules to permit manual filing of its applications.

II. BACKGROUND

2. 2500-2690 MHz Band Generally. In developing regulatory policies in the 2500-2690 MHz band over the last several decades, the Commission has been cognizant of this band's potential to host a variety of services. In 1963, the Commission established the Instructional Television Fixed Service (ITFS) in the 2500-2690 MHz band, envisioning that it would be used for transmission of instructional material to accredited public and private schools, colleges and universities for the formal education of students. In 1983, in response to the demand for additional spectrum for delivery of video entertainment programming to subscribers, the Commission re-allotted eight ITFS channels (the E and F channel

1 File Nos. 0007030772-000703077 (2015 Applications); Exhibit B: Waiver Request (2015 Waiver) (filed Nov. 13, 2015).

2 47 CFR § 1.913(b).

3 See Amendment of Parts 2 and 4 of the Commission's Rules and Regulations to Establish a New Class of Educational Television Service, Docket No. 14744, Report and Order, 39 FCC 846 (1963), recon. denied, 39 FCC 873 (1964) (ETV Decision).

4 See Amendment of the Commission's Rules with Regard to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service; and Applications for an Experimental Station and Establishment of Multi-Channel Systems, Report and Order, 48 Fed. Reg. 33873, 33875 para. 9 (1983) (1983 R&O) (citing ETV Decision, 39 FCC 846, 852-853 para. 25).

blocks) and associated response channels for use by the Multipoint Distribution Service (MDS).<sup>5</sup> In conjunction with this re-allotment, the FCC permitted ITFS licensees to lease “excess capacity” on their facilities to commercial entities.<sup>6</sup>

3. In April 2003, the Commission proposed new technical rules and a new band plan for ITFS and MDS spectrum (changing the service names to EBS and Broadband Radio Service (BRS), respectively).<sup>7</sup> At the same time, it implemented a filing freeze with respect to all applications for new BRS and EBS licenses, as well as for major modifications of those licenses, in order to permit the orderly and effective resolution of issues in the BRS/EBS proceeding.<sup>8</sup> In August 2003, the Commission modified the freeze by permitting the filing of applications for new BRS licenses and major modifications of those licenses.<sup>9</sup> The Commission also permitted the filing of applications for major modifications of EBS licenses, but maintained the filing freeze with respect to applications for new EBS licenses.<sup>10</sup> On June 10, 2004, the Commission adopted new rules that initiated a fundamental restructuring of the 2500-2690 MHz band in order to provide both existing EBS and BRS licensees and potential new entrants greater flexibility in order to encourage the highest and best use of spectrum domestically and internationally.<sup>11</sup> In 2008, the Commission sought comment on how to license unassigned EBS spectrum.<sup>12</sup>

4. *Northern Michigan University Applications.* NMU is an accredited university located in Marquette, Michigan that serves approximately 9,000 students with over 1,100 faculty and staff.<sup>13</sup> Over the last few years, using EBS spectrum, NMU has constructed and is operating a “WiMax network that covers about 230 square miles over rugged terrain in the Upper Peninsula of Michigan. NMU issues a university-supplied notebook to each fulltime student and now has more than 9,600 devices capable of

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<sup>5</sup> See Amendment of Parts 2, 21, 74 and 94 of the Commission’s Rules and Regulations in Regard to Frequency Allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service, Gen Docket No. 80-112 and CC Docket No. 80-116, *Report and Order*, 94 FCC 2d 1203 (1983) (*First Leasing Decision*).

<sup>6</sup> *Id.* at 1206-07 para. 4.

<sup>7</sup> See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands. *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 03-66, 18 FCC Rcd 6722 (2003) (*NPRM and MO&O*).

<sup>8</sup> See *NPRM and MO&O*, 18 FCC Rcd at 6813 para. 226, 6825 para. 260.

<sup>9</sup> See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands. *Second Memorandum Opinion and Order*, WT Docket No. 03-66, 18 FCC Rcd 16848 para. 1, 16853 para. 13 (2003) (*Second MO&O*).

<sup>10</sup> *Id.*

<sup>11</sup> Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands. *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O and FNPRM*).

<sup>12</sup> Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling*, WT Docket No. 03-66, 23 FCC Rcd 5992, 6060-6068 paras. 180-204 (2008) (*Second FNPRM*).

<sup>13</sup> Northern Michigan University, About, <http://www.nmu.edu/about> (last visited Mar. 21, 2016).

utilizing this network. In addition to university students, the network is also used to provide independent broadband service to K-12 students throughout the service area—extending local school networks to WiMax for use both at school and at home.”<sup>14</sup> NMU has been partnering with other colleges and K-12 school districts throughout the Upper Peninsula of Michigan for years.

5. On December 4, 2007, NMU filed an application seeking a new EBS authorization for four channels.<sup>15</sup> On August 6, 2008, the Wireless Telecommunications Bureau (“Bureau”) granted NMU waivers of the filing freeze on new EBS applications and of the electronic filing requirement.<sup>16</sup> The Bureau found that unique circumstances were presented by NMU’s situation; *i.e.*, there was no EBS license that covered Marquette, Michigan, and NMU proposed to use the spectrum solely to meet its educational needs and the needs of the surrounding community.<sup>17</sup> The Bureau also concluded that a waiver grant would be consistent with Commission precedent.<sup>18</sup>

6. The Bureau placed three conditions on the grant of the freeze waiver, based on commitments made by NMU. First, the Bureau adopted as a license condition NMU’s commitment not to lease its spectrum.<sup>19</sup> Second, the Bureau held, consistent with NMU’s request, that NMU’s GSA shall not include any area within the GSA of any previously licensed co-channel EBS station.<sup>20</sup> Third, although the discrete operations proposed in NMU’s 2007 Application were not within the Canadian coordination zone, to the extent that NMU subsequently wished to expand operations into the portion of its GSA that is within the coordination zone, the Bureau required NMU to comply with the coordination requirements of the relevant agreement between the United States and Canada.<sup>21</sup> The Bureau also waived the electronic filing requirement because the Universal Licensing System (ULS) was not configured to accept applications for new EBS stations.<sup>22</sup>

7. In 2009, NMU filed for an additional EBS channel that it indicated was necessary because the “24 megahertz of spectrum granted in the 2008 Waiver Order [was] insufficient...”<sup>23</sup> Finding that grant was in the public interest, and again waiving the EBS filing freeze, that application was granted as well, with the Bureau finding that; “absent access to the additional channel of EBS spectrum, NMU would face substantial challenges in providing educational content to all of the members of its school

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<sup>14</sup> 2015 Waiver at 2.

<sup>15</sup> File No. 0003250992 (filed Dec. 7, 2007) (2007 Application).

<sup>16</sup> Application of The Board of Trustees of Northern Michigan University For a New Educational Broadband Service Station, *Memorandum Opinion and Order*, 23 FCC Rcd 11832 (WTB 2008) (2008 Waiver Order).

<sup>17</sup> *Id.* at 11836 paras. 10-11.

<sup>18</sup> *Id.* at 11836 para. 12, *citing* Gateway Telecom LLC d/b/a StratusWave Communications; Applications For New Educational Broadband Service Stations on the A and B Group Channels in Centerville, Ohio; and the A and B Group Channels in Arden, West Virginia, *Memorandum Opinion and Order*, 22 FCC Rcd 15789 (2007) (*StratusWave MO&O*).

<sup>19</sup> 2008 Waiver Order, 23 FCC Rcd at 11837 para. 13.

<sup>20</sup> *Id.* at 11837 para. 14.

<sup>21</sup> *Id.*, *citing* Interim Arrangement Concerning the Use of the Frequency Bands 2150 – 2162 MHz and 2500 – 2690 MHz by MCS and MDS Stations Near the Canada/United States of America Border (Dec. 5, 1997) (*Interim Arrangement*).

<sup>22</sup> 2008 Waiver Order, 23 FCC Rcd at 11837-38 para. 15.

<sup>23</sup> File No. 0003872694 (Filed June 12, 2009).

community, as well as members of the Marquette community, a relatively remote rural location.”<sup>24</sup> In granting the license, the Bureau imposed the same conditions on NMU that it had imposed with the previous license grants: (1) NMU may not lease its spectrum; (2) NMU’s GSA will not include any area within the GSA of a previously-licensed co-channel EBS stations; and (3) that to the extent NMU’s operations extend into the Canadian coordination zone, it takes the necessary steps to obtain coordination prior to operation.<sup>25</sup> In addition, the Bureau also waived the electronic filing requirement because ULS was not configured to accept applications for new EBS stations.<sup>26</sup>

8. In 2012, after operating pursuant to grants of Special Temporary Authority (STA) obtained over a period of time, NMU applied to convert its 15 STA channels to permanent EBS channels.<sup>27</sup> NMU explained that its network was subject to several limitations that reduced its educational benefits but that could be resolved through the use of more spectrum.<sup>28</sup> In granting the licenses, the Bureau imposed the same three conditions on NMU that it had imposed with the previous license grants: (1) NMU may not lease its spectrum; (2) NMU’s GSA will not include any area within the GSA of a previously-licensed co-channel EBS stations; and (3) that to the extent NMU’s operations extend into the Canadian coordination zone, it takes the necessary steps to obtain coordination prior to operation.<sup>29</sup> In addition, the Bureau again waived the electronic filing requirement because ULS was not configured to accept applications for new EBS stations.<sup>30</sup>

9. On November 13, 2015, NMU filed the instant applications and associated requests for waivers of the EBS filings freeze and the electronic filing requirement of Section 1.913(b) of the Commission’s rules, in support of those applications requesting additional EBS channels on and near the reservation of the Bad River Band of the Lake Superior Tribe of Chippewa Indians in Northeastern Wisconsin and for areas covering the Upper Peninsula in Michigan.<sup>31</sup> NMU explains that its network is currently used both to expand learning opportunities for its own students and to provide independent broadband service to K-12 students provide its current service area.<sup>32</sup> NMU’s success with its WiMax wireless broadband has “caught the attention of other educators” which have indicated support for NMU’s construction of an Long Term Evolution (LTE) network in particular Geographic Service Areas (GSAs).<sup>33</sup> To that end, NMU asserts that it has received requests from other educational institutions throughout Michigan’s Upper Peninsula to “enable mobile broadband service in an effort to help place-bound students gain access to course curriculum offered by K-12 and post-secondary schools.”<sup>34</sup> While NMU

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<sup>24</sup> The Board of Trustees of Northern Michigan University, *Memorandum Opinion and Order*, 28 FCC Rcd 15576 (WTB BD 2013) (2013 Waiver Order 1).

<sup>25</sup> *Id.* at 15580-15581 paras. 12-13.

<sup>26</sup> *Id.* at 15581 para. 14.

<sup>27</sup> File Nos. 0005341316-0005341320 (filed Aug. 3, 2012).

<sup>28</sup> The Board of Trustees of Northern Michigan University, *Memorandum Opinion and Order*, 28 FCC Rcd 15583 (WTB BD 2013) (2013 Waiver Order 2).

<sup>29</sup> *Id.* at 15587-88 paras. 12-14.

<sup>30</sup> *Id.* at 15588 para. 15.

<sup>31</sup> 2015 Applications and 2015 Waiver. Section 1.913(b) of the Commission’s Rules states in relevant part that “all applications and other filings using FCC Forms 601 through 608 or associated schedules must be filed electronically in accordance with the electronic filing instructions provided by ULS.” 47 C.F.R. § 1.913(b).

<sup>32</sup> 2015 Waiver at 2.

<sup>33</sup> *Id.* at 3.

<sup>34</sup> *Id.* at 1.

does intend using the network proposed by the subject applications to support its own distance learning activities, it has also entered into agreements and understandings with a number of educational entities to provide broadband access to K-12 schools and community colleges throughout the Upper Peninsula of Michigan and nearby areas.<sup>35</sup> NMU expects that it will trade network services for space on existing city infrastructure and that the organizations using the network will contribute to the costs associated with maintaining the equipment and wireless services.<sup>36</sup> NMU indicates that it intends to use its additional EBS licenses “solely for educational purposes, and without any commercial objectives.”<sup>37</sup>

10. Specifically, NMU has filed applications to construct and operate an LTE network in six areas that have a demonstrated lack of available educational broadband service.<sup>38</sup> These areas are generally rural and remote, and have lower than average college graduation rates and income levels.<sup>39</sup> First, NMU is proposing to construct all 20 EBS channels in the rural area of Northeastern Wisconsin on and around the reservation of the Bad River Band of the Lake Superior Tribe of Chippewa Indians in partnership with the Tribal community and the non-profit Merit Network (the broadband service provider for Michigan educational institutions).<sup>40</sup> Second, NMU is proposing to construct 16 EBS channels to the Western Upper Peninsula area of Michigan in cooperation with Gogebic Community College, a commuter college, so that its students living in this remote and rural area, may obtain broadband access to do their schoolwork.<sup>41</sup> Third, NMU is proposing to construct 20 EBS channels in the Central Upper Peninsula area of Michigan in cooperation with Bay Community College to support its Iron Mountain campus and its students that live in the area. This network will also assist with broadband service for eight school districts in the area.<sup>42</sup> Fourth, NMU proposes to construct 20 EBS channels in the Southern Upper Peninsula in cooperation with Bay Community College for its Escanaba campus and its students that live in the area.<sup>43</sup> Fifth, NMU proposes to construct 20 EBS channels in the East Central Upper Peninsula area of Michigan in cooperation with a number of school districts including Delta, Schoolcraft and the Marquette Alger Regional Educational Service Agency, and to serve students from Bay Community College.<sup>44</sup> Finally, NMU proposes to construct 20 EBS Channels (A1234, B1234, C1234, D1234, and G1234) in the Eastern Upper Peninsula area of Michigan in cooperation with Bay Mills Community College and to serve its students in the area.<sup>45</sup>

11. Included as attachments to the Applications were letters of support from the Honorable Debbie Stabenow, United States Senator;<sup>46</sup> Michael Wiggins, Jr, Chairperson of the Bad River Band of

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<sup>35</sup> *Id.* at 3.

<sup>36</sup> *Id.* at 5.

<sup>37</sup> *Id.* at 16.

<sup>38</sup> *Id.* at 8, 9, 10, 11, 12 and 13.

<sup>39</sup> *Id.* at 6, 8, 9, 10, 11-12 and 13.

<sup>40</sup> *Id.* at 6-7.

<sup>41</sup> *Id.* at 7-8. In this area, the C group channels are currently licensed to Nicolet Area Technical College. *See* license for call sign WHR954.

<sup>42</sup> *Id.* at 9-10.

<sup>43</sup> *Id.* at 10-11.

<sup>44</sup> *Id.* at 11-12.

<sup>45</sup> *Id.* at 13-14.

<sup>46</sup> *Id.* at Attach. 2.

Lake Superior Tribe of Chippewa Indians;<sup>47</sup> James Lorenson, President of Gogebic Community College;<sup>48</sup> James V. O'Toole, City Manager of the City of Escanaba, Michigan;<sup>49</sup> Laura L. Coleman, President of Bay College;<sup>50</sup> Deborah L. Veiht, Superintendent of the Marquette Alger Regional Educational Service Agency<sup>51</sup> and Michal C. Parish, President of Bay Mills Community College<sup>52</sup> all indicating support for the grant to NMU of the EBS Applications, and their desire to work with NMU to bring broadband access to their respective students.

12. NMU's Applications were listed on public notice as accepted for filing on December 30, 2015.<sup>53</sup> No petitions to deny or other oppositions were filed.

### III. DISCUSSION

13. As noted, NMU seeks both a waiver of the filing freeze on new EBS applications and a waiver of the electronic filing requirement contained in Section 1.913(b) of the Commission's rules for such applications, to permit it to use available EBS channels to operate a LTE network for the provision of educational and instructional material.<sup>54</sup> The Commission may grant a request for a waiver if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>55</sup> As discussed below, we conclude that NMU has met the waiver standard with respect to both of its requests, and accordingly we grant its Waiver Request, subject to the conditions outlined below.

14. We conclude that application of the filing freeze would be inequitable and contrary to the public interest under the unique circumstances presented by NMU. Specifically, we find that, absent access to the additional channels of EBS spectrum, NMU would face substantial challenges in building the network necessary for providing educational content on and near the reservation of the Bad River Band of the Lake Superior Tribe of Chippewa Indians in Northeastern Wisconsin and for the five areas covering the Upper Peninsula in Michigan. Similar to what was determined in the 2008 and 2013 Waiver Orders, the areas for have limited broadband access in residences or schools because of the limited broadband available in those areas, and where such service is available, it is not affordable for these communities and because there are no available EBS licensees that cover these areas.<sup>56</sup> Without other EBS licensees in these area, NMU cannot attempt to acquire or lease spectrum from another EBS

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<sup>47</sup> *Id.* at Attach. 5.

<sup>48</sup> *Id.* at Attach. 6.

<sup>49</sup> *Id.* at Attach. 7.

<sup>50</sup> *Id.* at Attach. 8.

<sup>51</sup> *Id.* at Attach. 9.

<sup>52</sup> *Id.* at Attach. 10.

<sup>53</sup> Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing, Report No. 11045, *Public Notice* (rel. Dec. 30, 2015) at 2.

<sup>54</sup> 2015 Waiver at 1.

<sup>55</sup> 47 C.F.R. § 1.925(b)(3).

<sup>56</sup> 2008 Waiver Order, 23 FCC Rcd at 11836 para. 10; 2013 Waiver Order 1, 28 FCC Rcd at 15580 para. 11; 2013 Waiver Order 2, 28 FCC Rcd at 15587 para. 12.

licensee. It therefore has no alternative to asking the Commission for additional channels. Furthermore, given the urgent need for educational broadband service in these areas, we do not believe that asking NMU to wait until the Commission develops a new mechanism for assigning unassigned EBS spectrum is appropriate. We therefore conclude that NMU has justified a waiver of the EBS filing freeze under the second prong of the waiver standard.

15. We will impose the same conditions on the grant of this authorization that the Bureau imposed in the 2008 and 2013 Waiver Orders. In this regard, we adopt as a license condition NMU's continued commitment not to lease its spectrum.<sup>57</sup> Section 27.1201(a) of the Commission's Rules states that a "license for an Educational Broadband Service stations will be issued only to an accredited institution...engaged in the formal education of enrolled students."<sup>58</sup> NMU is such an institution and has indicated that it will use the proposed EBS system solely to meet the educational needs of the University and its educational partners in the surrounding community.<sup>59</sup> The provision of educational broadband services via new EBS licenses would be consistent with the Commission's view that, "the public interest favors preserving [EBS] spectrum for licensing to [educators] and that doing so will further the educational objectives that led to the establishment of [EBS]."<sup>60</sup> We find that NMU's concrete plan to put the spectrum to use immediately solely for educational purposes and its commitment not to lease the spectrum constitute unique circumstances that will ensure "that the spectrum is used for educational purposes"<sup>61</sup> justifying a waiver of the filing freeze.

16. We place the further condition on NMU's license that its GSAs shall not include any area within the GSA of any previously licensed co-channel EBS station.<sup>62</sup> In addition, to the extent that the discrete operations proposed in NMU's Applications are within the Canadian coordination zone, it must comply with the coordination requirements of the relevant agreement between the United States and Canada.<sup>63</sup> Specifically, prior to operating within 120 kilometers of the Canadian border or between 120 160 kilometers of the Canadian border where there its signal causes a power flux density (PFD) at ground level anywhere in Canada that exceeds -116 dBw/m<sup>2</sup> in any 1 MHz, NMU must either file an application for an individual transmitter authorization with the Commission, which will be coordinated with

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<sup>57</sup> 2015 Waiver at 16.

<sup>58</sup> 47 CFR § 27.1201(a).

<sup>59</sup> 2015 Waiver at 16.

<sup>60</sup> *StratusWave MO&O*, 22 FCC Rcd at 15796 para. 15 citing *BRS/EBS R&O and FNPRM*, 19 FCC Rcd at 14222 para. 152.

<sup>61</sup> *2008 Waiver Order*, 23 FCC Rcd at 11837 para. 13.

<sup>62</sup> As indicated in the Waiver Request, NMU has not requested authorization for any EBS spectrum already authorized to another entity, and has agreed to obtain consent and cooperate with previously existing licensees to the extent necessary. Thus, with respect to Application File No. 0007030774, NMU has not requested authorization for any overlap area already included in the license for EBS Station WHR954. 2015 Waiver at 8. With respect to File No. 0007030776, NMU has not requested authorization for the overlap area already included in the license for EBS Station WNC702. 2015 Waiver at 12. Finally, with respect to File No. 0007030777, NMU has not requested authorization for the overlap already included in the licenses for EBS Stations WNR997, WLX374 and WNC702. 2015 Waiver at 14.

<sup>63</sup> *Interim Arrangement*.

Canada,<sup>64</sup> or directly coordinate with affected licensees across the border, as permitted under the agreement with Canada.<sup>65</sup>

17. In addition, we recognize that granting these waivers will result in NMU obtaining valuable spectrum. While we believe that there are substantial public interest benefits to granting these waivers, we also believe it appropriate to place conditions on the waiver grant to ensure that the anticipated public interest benefits materialize. Thus, given the lack of broadband alternatives in the areas in questions, we believe it is appropriate to require NMU to build out on an accelerated schedule. As already committed to by NMU,<sup>66</sup> we will require NMU to provide substantial service pursuant to Section 27.14(o) within two years from the date the Applications are granted by the Bureau.<sup>67</sup>

18. With respect to the electronic filing requirement contained in Section 1.1913(b) of the Commission's Rules,<sup>68</sup> we observe that the Commission's electronic ULS is not currently configured to accept applications such as the one submitted by NMU. We therefore conclude that, in light of these circumstances, application of the rule would be inequitable and contrary to the public interest because it would be unfair to reject an application for failure to file electronically when electronic filing capability is not available. We therefore grant NMU a waiver to permit manual filing of its Applications.

19. Based upon the evaluation of the record before us, we conclude that NMU has demonstrated that continued application of the filing freeze and electronic filing requirement would be inequitable, unduly burdensome and contrary to the public interest, given the unique circumstances of this case. We also find that waiving the filing freeze and the electronic filing requirement will facilitate the provision of educational material through a broadband network in on and near the reservation of the Bad River Band of the Lake Superior Tribe of Chippewa Indians in Northeastern Wisconsin and for areas covering the Upper Peninsula in Michigan and will further the Commission's vision of promoting "the expansion of competitive telecommunications networks which are a vital component of technological innovation and economic growth, helping to ensure that the U.S. remains a leader in providing its citizens opportunities for economic and educational development."<sup>69</sup> We note that the waivers granted in the instant *Memorandum Opinion and Order* are based on the unique circumstances of this case, and do not prejudice the Commission's consideration of the appropriate mechanism generally for licensing unassigned EBS spectrum.<sup>70</sup>

#### IV. CONCLUSION AND ORDERING CLAUSES

20. For the reasons discussed above, we grant NMU's requests for waiver of (1) the filing freeze that was imposed by the Commission on new EBS applications in the Commission's April 2003, *NPRM and MO&O*, and, (2) the electronic filing requirement in Section 1.1913(b) of the Commission's Rules. We also direct the Broadband Division to process NMU's Applications in accordance with the requirements set forth in this *Memorandum Opinion and Order* and the Commission's rules.

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<sup>64</sup> See 47 CFR § 27.1209(b)(1)(i).

<sup>65</sup> This condition is not applicable to File No. 0007030775 because that proposed GSA is at least 182 kilometers from the Canadian border.

<sup>66</sup> See 2015 Applications; Amendment: Letter (filed March 31, 2016).

<sup>67</sup> 47 CFR § 27.14(o).

<sup>68</sup> 47 CFR § 1.913(b).

<sup>69</sup> FCC Strategic Plan 2015-2018 at 5.

<sup>70</sup> See *Second FNPRM*, *supra*.

21. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended 47 U.S.C. § 154(i), and Section 1.925(b)(3) of the Commission's Rules, 47 C.F.R. § 1.925(b)(3), that the waiver requests filed by Northern Michigan University on November 13, 2015 in connection with File Nos. 0007030772-0007030777 ARE GRANTED, subject to the conditions noted below.

22. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 309 that the licensing staff of the Broadband Division, Wireless Telecommunications Bureau SHALL PROCESS File Nos. 0007030772-0007030777 in accordance with this *Memorandum Opinion and Order* and the Commission's Rules.

23. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309 that the following conditions SHALL BE IMPOSED on each authorization issued to Northern Michigan University as a result of the application it has filed:

The Geographic Service Area of this station shall not include any area within the GSA of any previously licensed co-channel EBS station.

Operation within 160 kilometers of the Canadian border is prohibited without prior compliance, to the extent applicable, with the coordination requirements of the Interim Arrangement Concerning the Use of the Frequency Bands 2150 – 2162 MHz and 2500 – 2690 MHz by MCS and MDS Stations Near the Canada/United States of America Border or any subsequent agreement with Canada.<sup>71</sup>

The Board of Trustees of Northern Michigan University shall not lease any spectrum associated with this license to another entity.

The Board of Trustees of Northern Michigan University shall demonstrate substantial service within two years after the grant of their applications.

24. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble  
Deputy Chief, Broadband Division  
Wireless Telecommunications Bureau

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<sup>71</sup> This condition shall not be applied to File No. 0007030775.